

## SMUGGLING OF INTOXICATING LIQUORS

*Convention and exchange of notes, with memorandum, signed at Washington May 31, 1928*

*Senate advice and consent to ratification January 26, 1929*

*Ratified by the President of the United States January 30, 1929*

*Ratified by Japan November 22, 1929*

*Ratifications exchanged at Washington January 16, 1930*

*Entered into force January 16, 1930*

*Proclaimed by the President of the United States January 16, 1930*

*Revived (after World War II) July 22, 1953,<sup>1</sup> pursuant to article 7 of treaty of peace signed at San Francisco September 8, 1951<sup>2</sup>*

46 Stat. 2446; Treaty Series 807

### CONVENTION

The President of the United States of America and His Majesty the Emperor of Japan, being desirous of avoiding any difficulties which might arise between them in connection with the laws in force in the United States on the subject of alcoholic beverages, have decided to conclude a Convention for that purpose, and have appointed as their Plenipotentiaries:

The President of the United States of America, Frank B. Kellogg, Secretary of State of the United States;

His Majesty the Emperor of Japan, Tsuneo Matsudaira, Jusammi, the First Class of the Imperial Order of the Sacred Treasure, His Majesty's Ambassador Extraordinary and Plenipotentiary to the United States of America;

Who, having communicated their full powers, found in good and due form, have agreed as follows:

### ARTICLE I

The High Contracting Parties declare that it is their firm intention to uphold the principle that three marine miles extending from the coastline outwards and measured from low-water mark constitute the proper limits of territorial waters.

---

<sup>1</sup> *Department of State Bulletin*, May 18, 1953, p. 721.

<sup>2</sup> 3 UST 3175; TIAS 2490.

ARTICLE II <sup>a</sup>

(1) The Japanese Government agree that they will raise no objection to the boarding of private vessels under the Japanese flag outside the limits of territorial waters by the authorities of the United States, its territories or possessions, in order that enquiries may be addressed to those on board and an examination be made of the ship's papers for the purpose of ascertaining whether the vessel or those on board are endeavoring to import or have imported alcoholic beverages into the United States, its territories or possessions, in violation of the laws there in force. When such enquiries and examination show a reasonable ground for suspicion, a search of the vessel may be initiated.

(2) If there is reasonable cause for belief that the vessel has committed or is committing or attempting to commit an offense against the laws of the United States, its territories or possessions, prohibiting the importation of alcoholic beverages, the vessel may be seized and taken into a port of the United States, its territories or possessions, for adjudication in accordance with such laws.

(3) The rights conferred by this article shall not be exercised at a greater distance from the coast of the United States, its territories or possessions, than can be traversed in one hour by the vessel suspected of endeavoring to commit the offense. In cases, however, in which the liquor is intended to be conveyed to the United States, its territories or possessions, by a vessel other than the one boarded and searched, it shall be the speed of such other vessel, and not the speed of the vessel boarded, which shall determine the distance from the coast at which the right under this article can be exercised.

## ARTICLE III

No penalty or forfeiture under the laws of the United States shall be applicable or attach to alcoholic liquors or to vessels or persons by reason of the carriage of such liquors, when such liquors are listed as sea stores or cargo destined for a port foreign to the United States, its territories or possessions, on board Japanese vessels voyaging to or from ports of the United States, or its territories or possessions, or passing through the territorial waters thereof, provided that such liquors shall be kept under seal continuously while the vessel on which they are carried remains within said territorial waters and that no part of such liquors shall at any time or place be unladen within the United States, its territories or possessions.

## ARTICLE IV

Any claim by a Japanese vessel for compensation on the ground that it has suffered loss or injury through the improper or unreasonable exercise

---

<sup>a</sup> For understandings relating to art. II, see memorandum, p. 450.

of the rights conferred by Article II of this Convention or on the ground that it has not been given the benefit of Article III shall be referred for the joint consideration of two persons, one of whom shall be nominated by each of the High Contracting Parties.

Effect shall be given to the recommendations contained in any such joint report. If no joint report can be agreed upon, the claim shall be referred to the Permanent Court of Arbitration at The Hague described in the Convention for the pacific settlement of international disputes, concluded at The Hague, October 18, 1907.<sup>4</sup> The arbitral tribunal shall be constituted in accordance with Article 87 (Chapter IV) and with Article 59 (Chapter III) of the said Convention. The proceedings shall be regulated by so much of Chapter IV of the said Convention and of Chapter III thereof (special regard being had for Articles 70 and 74, but excepting Articles 53 and 54) as the tribunal may consider to be applicable and to be consistent with the provisions of this agreement. All sums of money which may be awarded by the tribunal on account of any claim shall be paid within eighteen months after the date of the final award without interest and without deduction, save as hereafter specified. Each Government shall bear its own expenses. The expenses of the tribunal shall be defrayed by a ratable deduction from the amount of the sums awarded by it, at a rate of five percent on such sums, or at such lower rate as may be agreed upon between the two Governments; the deficiency, if any, shall be defrayed in equal moieties by the two Governments.

#### ARTICLE V <sup>5</sup>

This Convention shall be subject to ratification and shall remain in force for a period of one year from the date of the exchange of ratifications.

Three months before the expiration of the said period of one year, either of the High Contracting Parties may give notice of its desire to propose modifications in the terms of the Convention.

If such modifications have not been agreed upon before the expiration of the term of one year mentioned above, the Convention shall lapse.

If no notice is given on either side of the desire to propose modifications, the Convention shall remain in force for another year, and so on automatically, but subject always in respect of each such period of a year to the right on either side to propose as provided above three months before its expiration modifications in the Convention, and to the provision that if such modifications are not agreed upon before the close of the period of one year, the Convention shall lapse.

---

<sup>4</sup> TS 536, *ante*, vol. 1, p. 577.

<sup>5</sup> For an understanding relating to art. V, see memorandum, p. 450.

## ARTICLE VI

In the event that either of the High Contracting Parties shall be prevented either by judicial decision or legislative action from giving full effect to the provisions of the present Convention the said Convention shall automatically lapse, and, on such lapse or whenever this Convention shall cease to be in force, each High Contracting Party shall enjoy all the rights which it would have possessed had this Convention not been concluded.

The present Convention shall be duly ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof and by His Majesty the Emperor of Japan; and the ratifications shall be exchanged at Washington as soon as possible.

In witness whereof, the respective Plenipotentiaries have signed the present Convention in duplicate and have thereunto affixed their seals.

Done at the city of Washington this 31st day of May, in the nineteen hundred and twenty-eighth year of the Christian era, corresponding to the 31st day of the 5th month of the 3rd year of Shōwa.

FRANK B. KELLOGG [SEAL]  
T. MATSUDAIRA [SEAL]

## EXCHANGE OF NOTES

*The Japanese Ambassador to the Secretary of State*

JAPANESE EMBASSY  
*Washington, 31st May, 3 Shōwa (1928)*

SIR:

In proceeding to-day to the signature of the Convention between Japan and the United States for the purpose of avoiding difficulties which might arise in connection with the laws in force in the United States on the subject of alcoholic beverages, I am happy to attach hereto, for the purpose of future reference, a memorandum of the understanding that has been reached between us in regard to the interpretation of the Convention. I beg leave, therefore, to request that you kindly acknowledge and confirm this statement.

Accept, Sir, the renewed assurances of my highest consideration.

T. MATSUDAIRA

Enclosure: Memorandum

The Honorable FRANK B. KELLOGG,  
*Secretary of State,*  
*Washington*

## MEMORANDUM

It is understood

1. That the term "private vessels" as used in the Convention signifies all classes of vessels other than those owned or controlled by the Japanese Government and used for Governmental purposes, for the conduct of which the Japanese Government assumes full responsibility.

2. That the rights conferred on the authorities of the United States under Article II of the Convention do not relate to territorial waters of Japan or to waters of any territory over which Japan exercises a mandate under the authority of the League of Nations.

3. That there will be no advance requirement that Japanese vessels shall stop regularly at designated places to await such enquiries or examination as are authorized in Article II of the Convention.

4. That the Convention does not relate to alcoholic liquors for nonbeverage, including medicinal, purposes, which are regulated by the domestic laws of the United States.

5. That the expression "three months before the expiration of the said period of one year" as used in the second paragraph of Article V is used in the sense of not later than three months before the expiration of the said period.

6. That questions involving the application of the Convention arising while it is in force will be adjudicated in accordance with the provisions of the Convention as in force at the time the circumstances occurred, even if the Convention should lapse or be terminated before the decision is rendered.

---

*The Secretary of State to the Japanese Ambassador*

DEPARTMENT OF STATE

*May 31, 1928*

EXCELLENCY:

I have the honor to acknowledge the receipt of Your Excellency's note dated May 31, 1928, and the memorandum attached thereto of the understanding that has been reached between us in regard to the interpretation of the Convention between the United States and Japan for the purpose of avoiding difficulties which might arise in connection with the laws in force in the United States on the subject of alcoholic beverages.

I beg to state that I am happy to confirm that the said memorandum, a duplicate of which is attached hereto, is a correct statement of the understanding reached by us in regard to the interpretation of the Convention.

Accept, Excellency, the renewed assurances of my highest consideration.

FRANK B. KELLOGG

Enclosure: Memorandum

His Excellency Mr. TSUNEO MATSUDAIRA,  
*The Japanese Ambassador*

[For text of memorandum, see above.]